



Signed and Filed: September 01, 2006

Lewis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

9 In re) Bankruptcy Case
10 PATRICIA McCOLM,) No. 00-31332DM
11)
12 Debtor.) Chapter 7
13)
14 LINDA EKSTROM STANLEY,) Adversary Proceeding
15) No. 01-3005DM
16 Plaintiff,)
17)
18 v.)
19)
20 PATRICIA McCOLM,)
21)
22 Defendant.)
23)

MEMORANDUM DECISION RE DENIAL OF DISCHARGE

18 On August 9, 2006, this court entered an order to show cause
19 why judgment should not be entered in this adversary proceeding,¹
20 directing Patricia Alice McColm ("Debtor") to file and serve any
21 opposition to entry of judgment no later than August 30, 2006.
22 Debtor filed an untimely opposition on August 31, 2006.
23 Notwithstanding the tardiness of Debtor's opposition, the court
24 has considered the merits of the opposition and concludes that

26 ¹ Although the caption on the order contained the correct
27 adversary proceeding number, it incorrectly identified Debtor's
28 main case number as 03-31332 instead of 00-31332. This
typographical error is of no substantive significance and was thus
harmless.

1 Debtor has offered no sustainable legal or factual defense against
2 entry of judgment.

3 First, despite Debtor's contentions to the contrary, the
4 complaint of the plaintiff was timely filed. See Fed. R. Bankr.
5 P. 1019(2) and 4004(a). Debtor simply ignores Rule 1019(2), which
6 sets a new deadline for filing objections to discharge upon
7 conversion of a case to Chapter 7. Debtor also asserts that Rule
8 4004(a) required service of the complaint on all creditors.
9 Debtor is incorrect; Rule 4004 requires that notice of the
10 deadline for filing complaints, and not the complaint itself, be
11 served on all creditors.

12 Debtor also contends that the plaintiff did not serve the
13 complaint on her. The record reflects, however, that the
14 complaint was attached to the summons which was served on Debtor
15 on her then address of record on January 11, 2001. See Exhibit A
16 to the Declaration of Stephen L. Johnson in Support of Request For
17 Clerk's Default, filed on February 12, 2001.²

18 Debtor argues that entry of judgment is inappropriate because
19 this court purportedly erred in converting her case and in denying
20 certain exemptions. These rulings have no relevance, legally or
21 factually, to the merits of this adversary proceeding. Moreover,
22 they are the subject of separate final orders which were appealed
23 by Debtor.

24 Finally, Debtor argues that this court should not enter the

25
26 ² Incidentally, Debtor has known about this case since at
27 least April, 2001, when she prematurely filed a notice of appeal
28 of the clerk's entry of default, yet she has not filed any answer
or motion to strike the complaint, even after the appeal was
dismissed as interlocutory and the matter remanded to this court
on June 23, 2005.

1 judgment because it should recuse itself from all matters
2 pertaining to her. For the reasons previously stated in response
3 to this argument made on repeated occasions by Debtor, no grounds
4 exist for recusal.

5 The record reflects that Debtor filed her current bankruptcy
6 case (Case No. 00-31332) less than six years after filing a prior
7 case (Case No. 98-34290) in which she received a discharge.
8 Accordingly, as a matter of law and fact, Debtor is not entitled
9 to a discharge in her current case pursuant to 11 U.S.C.
10 § 727(a)(8). Therefore, this court will overrule Debtor's
11 objections and enter a judgment denying her discharge.

* *END OF MEMORANDUM DECISION* *

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